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Federal Communications Commission
Office of the Secretary

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APR 26 2010

Federal Communications Commission
Office of the Secretary

BEFORE THE PUBLIC SERVICE COMMISSION OF WYOMING

DOCKET FILE COPY ORIGINAL

RECEIVED

IN THE MATTER OF THE REGULATION OF)
TELEPHONE POLE ATTACHMENT SERVICE)
FOR CABLE TELEVISION SYSTEMS)

MAR 15 1983 GENERAL
ORDER NO. 49

ENFORCEMENT DIVISION

NOTICE AND ORDER

This matter is before the Commission upon the 1978 amendment to the Federal Communications Act (47 U.S.C. Section 224) whereby the U.S. Congress allowed states to continue the regulation of utility pole attachment service (rates, terms, and conditions for utility pole attachments by cable television systems) upon certification to the Federal Communications Commission that a state or its utility regulatory Commission regulates such rates, terms and conditions; and that it has the authority to consider and does consider the interest of the subscribers of cable television services, as well as the interests of the consumers of the utility services.

The Commission, having considered the governing Wyoming Statutes, its policies governing all utility pole attachments, and being fully advised in the premises CONCLUDES, as follows:

1. The Commission has heretofore regulated all utility pole attachment service by requiring the utilities to file contracts entered into between them and the cable television systems or other person desiring to use space on utility poles; which contracts must set forth the terms, conditions and rates for use of such space. This method of pole attachment regulation is pursuant to W.S. (Wyoming Statutes) 37-3-111 and the

Office of Chairman Mark S. Fowler

Date: 7-19-83

To:

- | | |
|---|---|
| <input checked="" type="checkbox"/> Common Carrier Bureau | <input type="checkbox"/> Managing Director |
| <input type="checkbox"/> CCB Complaints Branch | <input type="checkbox"/> Secretary |
| <input type="checkbox"/> Mass Media Bureau | <input type="checkbox"/> Library |
| <input type="checkbox"/> MMB Complaints Branch | <input type="checkbox"/> Internal Review/Security |
| <input type="checkbox"/> Private Radio Bureau | <input type="checkbox"/> Review Board |
| <input type="checkbox"/> Field Operations Bureau | <input type="checkbox"/> Admin. Law Judges |
| <input type="checkbox"/> Plans and Policy | <input type="checkbox"/> Public Affairs |
| <input type="checkbox"/> Science and Technology | <input type="checkbox"/> Consumer Assistance |
| <input type="checkbox"/> General Counsel | <input type="checkbox"/> |

From: [Signature]

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| <input type="checkbox"/> Appropriate Handling— | <input type="checkbox"/> Prepare Reply for |
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| <input type="checkbox"/> Per Conversation | Bureau/Office Chief's |
| <input type="checkbox"/> Rewrite and Return | Signature |

Internal: Form A Form B Form C Form D

(1) gsat Att. 1 7/24/83

(2) _____

Remarks:

THE STATE



OF WYOMING

ED HERSCHLER
GOVERNOR

Public Service Commission

CAPITOL HILL BUILDING

320 W. 25TH STREET

CHEYENNE, WYOMING 82002

JOHN R. SMYTH
CHAIRMAN

G. KEITH OSBORN
DEPUTY CHAIRMAN

C.E. "NED" JOHNSON
COMMISSIONER

ALEX J. ELIOPULOS
CHIEF COUNSEL AND
ADMINISTRATIVE SECRETARY

RECEIVED

JUL 19 1983

MARK S. FOWLER
CHAIRMAN

FRANK L. RAUCHFUSS
DIRECTOR, UTILITIES DEPARTMENT

DELBERT L. BOYER
CHIEF ENGINEER

WILLIAM M. ROONEY
DIRECTOR, MOTOR TRANSPORTATION

WILLIAM L. JOHNSON
DIRECTOR, RATE AND TARIFF

July 12, 1983

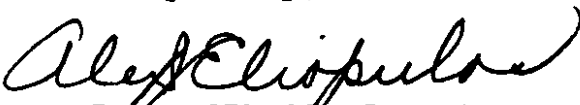
Mark S. Fowler, Chairman
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Dear Chairman Fowler:

Concerning the Wyoming Public Service Commission certification that it fully regulates utility pole attachment service pursuant to requirements of 47 U.S.C. 224(c)(2), a copy of such certification being enclosed, the State District Court has ruled that this Commission must enter into a rule-making procedure prior to such regulation. A copy of the Commission's notice and order vacating its certification pursuant to the Court Order is also attached.

The Commission will commence its rule-making procedure at the earliest opportunity. We will provide the Commission's rule-making order upon the final promulgation.

Yours very truly,


ALEX J. ELIOPULOS, Secretary

AJE:lb

Enc.

cc: Gary M. Epstein, Chief,
Common Carrier Bureau

*Public Service Commission*

CAPITOL HILL BUILDING

320 W. 25TH STREET

CHEYENNE, WYOMING 82002

JOHN R. SMYTH
CHAIRMAN
G. KEITH OSBORN
DEPUTY CHAIRMAN
C.E. "NED" JOHNSON
COMMISSIONER
ALEX J. ELIOPULOS
CHIEF COUNSEL AND
ADMINISTRATIVE SECRETARY

FRANK L. RAUCHFUSS
DIRECTOR, UTILITIES DEPARTMENT
DELBERT L. BOYER
CHIEF ENGINEER
WILLIAM M. ROONEY
DIRECTOR, MOTOR TRANSPORTATION
WILLIAM L. JOHNSON
DIRECTOR, RATE AND TARIFF

February 24, 1983

Mark S. Fowler, Chairman
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Dear Chairman Fowler:

Enclosed are two conformed copies of the Commission's order whereby it certifies that it fully regulates utility telephone pole attachment service for cable television systems pursuant to the requirements of 47 U.S.C. 224(c)(2).

Yours very truly,

Alex J. Eliopoulos
ALEX J. ELIOPULOS, Secretary

AJE:lb

Enc.

cc: Gary M. Epstein, Chief,
Common Carrier Bureau

BEFORE THE PUBLIC SERVICE COMMISSION OF WYOMING

IN THE MATTER OF THE REGULATION OF)
TELEPHONE POLE ATTACHMENT SERVICE)
FOR CABLE TELEVISION SYSTEMS)

GENERAL
ORDER NO. 49

NOTICE AND ORDER

This matter is before the Commission upon the 1978 amendment to the Federal Communications Act (47 U.S.C. Section 224) whereby the U.S. Congress allowed states to continue the regulation of utility pole attachment service (rates, terms, and conditions for utility pole attachments by cable television systems) upon certification to the Federal Communications Commission that a state or its utility regulatory Commission regulates such rates, terms and conditions; and that it has the authority to consider and does consider the interest of the subscribers of cable television services, as well as the interests of the consumers of the utility services.

The Commission, having considered the governing Wyoming Statutes, its policies governing all utility pole attachments, and being fully advised in the premises CONCLUDES, as follows:

1. The Commission has heretofore regulated all utility pole attachment service by requiring the utilities to file contracts entered into between them and the cable television systems or other person desiring to use space on utility poles; which contracts must set forth the terms, conditions and rates for use of such space. This method of pole attachment regulation is pursuant to W.S. (Wyoming Statutes) 37-3-111 and the long standing Commission rule now designated Section 218; both of which require the filing by utilities of contracts affecting utility service or the use of utility facilities, to permit the Commission to determine as required by law that the charges, mode of attachment, and safety of such attachments and service are in the public interest.

The general statutory authority for regulation of pole attachment service is:

a. W. S. 37-2-112 which provides that the Commission has general and exclusive powers to regulate and supervise every public utility as defined by W.S. 37-1-101 including telephone utilities;

b. W. S. 37-1-102 which defines the terms "rate" and "service regulation" as follows:

"(a) The term "rate," when used in this act, shall mean and include, in the plural number, as well as in the singular, every individual or joint rate, classification fair, toll, charge or other compensation for service rendered or to be rendered by any public utility, and every rule, regulation, practice, act, requirement or privilege in any way relating to such rate, fair, toll, charge or other compensation, and any schedule or tariff or part of a schedule or tariff thereof.

(b) The term "service regulation" shall mean and include every rule, regulation, practice, act or requirement in any way relating to the service or facilities of a public utility." (emphasis supplied);

c. W. S. 37-2-119, 37-121, 37-2-112, 37-3-101 and 37-3-103 which define the Commission's rate-making authority, including its regulation of the "renting of any facilities incident to such service" (W.S. 37-3-103); and

d. W. S. 37-112 and 37-3-114 which govern the safe use of such facilities; the specific language of 37-3-114 pertinent to this order being:

"All instrumentalities, equipment, plant and facilities furnished, employed or used by any public utility, shall in all respects be adequate and efficient, and the construction, operation and use thereof, shall be such as shall prevent injury to property, and as shall promote the safety, health, comfort, and convenience of its patrons, employees and the public, and to this end, the commission may make rules and regulations governing the construction, maintenance and operation of telephone, telegraph, trolley, electric light and power lines hereafter built within this state*** Provided that all such equipment, plant, and facilities shall be maintained in such working condition that will provide a minimum of interference with radio and television reception to residents and highway users in the immediate area of such equipment, plant, and facilities." (Emphasis supplied)

2. The Commission, pursuant to W.S. 37-2-121 and the other statutory authority set forth above, is specifically empowered: to investigate rates for service provided by public utilities; to fix such rates as it shall determine to be just and reasonable and in compliance with law; to regulate the use or rental of utility facilities in the utility public and other public interest; and to regulate the safety of the service and facilities provided by a public utility.

3. The Commission's jurisdiction over Wyoming utility telephone companies extends to their poles, which are an integral part of their facilities. Regulation of the service of providing pole attachment by telephone companies is necessary in the public interest in that all utility facilities should be operated to produce the optimal results to both utility and its subscribers, including that there should be a fair, just and reasonable rate for pole attachment service. The Commission is aware that revenue received by telephone companies from such sources as pole attachment rates reduces the revenue that must be earned from conventional utility services, thereby lowering the utility consumer's overall rate. Moreover, regulation of pole attachment rates by the PSC will enable the Commission to establish rates for such pole attachments that are compensatory and do not result in the subsidization by telephone subscribers of cable television systems while, on the other hand, insuring that the cable television systems pay a fair and reasonable rate for the pole attachment service.

4. It is clear under Wyoming law that the Wyoming utility telephone companies permitting cable television systems to use space on their utility poles constitutes the rendering of a regulated utility service. There can be no doubt that the utilization by cable television systems of telephone company poles has resulted in substantial and direct benefit to the

cable television systems. Similarly, the utility poles owned by a telephone company are clearly facilities of that company which are made available for use by various customers, including cable television systems.

5. Wyoming law, including the public interest mandates thereof, requires that the Commission's policies governing regulation of Cable television system pole attachment service should comply with the requirements of the 1978 Federal Communications Act Amendment. The Commission action is required by law and conforms to the decision by the Supreme Court of the State of Utah dated September 30, 1982 (Case Nos. 17794, 17813, Utah Cable Television Operations et al v. Utah PSC).

IT IS THEREFORE ORDERED THAT:

1. All Wyoming telephone utilities regulated by the Commission, which provide full attachment space for cable television systems, shall file tariffs setting forth the rates, terms and conditions for such pole attachments.

2. The Secretary of the Commission shall provide a copy of this order to the Federal Communications Commission to certify that this Commission regulates pole attachment rates, terms and conditions; and that the Commission has the authority to consider, and must, under such authority, consider the interests of the subscribers of cable television systems as well as the interests of the consumers of the telephone utility services, as provided in 47 U.S.C. 224(c)(2).

3. The Secretary of the Commission shall provide a copy of this order to the Wyoming telephone utilities, the Wyoming cable television systems and shall publish the same.

4. Any protests to or other representations concerning this order must be filed with the Commission on or before April 15, 1983 at the following address:

Wyoming Public Service Commission
Capitol Hill Building
320 West 25th Street
Cheyenne, Wyoming 82002
Attention: Alex J. Eliopulos, Secretary


5. This order is effective immediately.

MADE and ENTERED at Cheyenne, Wyoming this 17th day of
February, 1983.

PUBLIC SERVICE COMMISSION OF WYOMING


JOHN R. SMYTH, Chairman


G. KEITH OSBORN, Commissioner


C. E. JOHNSON, Commissioner



ATTEST:


ALEX J. ELIOPULOS, Secretary

BEFORE THE
PUBLIC SERVICE COMMISSION OF WYOMING

IN THE MATTER OF THE)
REGULATION OF UTILITY POLE)
ATTACHMENT SERVICE FOR CABLE)
TELEPHONE SYSTEMS AND OTHER)
PERSONS)

NOTICE AND ORDER
VACATING GENERAL ORDER NO. 49

THIS MATTER is before the Commission upon the order of the District Court, First Judicial District, Civil Action No. 101-278, and the Commission having reviewed the District Court order and being otherwise fully advised in the premises;

IT IS HEREBY ORDERED THAT:

1. General Order No. 49 is hereby vacated and is to be treated as having no force and effect.

2. The Commission shall initiate rulemaking pursuant to the Wyoming Administrative Procedures Act with respect to the subject matter of General Order No. 49. The Secretary of the Commission shall commence said rulemaking as soon as possible.

3. The certification of jurisdiction over pole attachment rates, terms and conditions previously transmitted to the Federal Communications Commission (FCC) is hereby rescinded as of the date of certification, and is of no force and effect. The Secretary of the Commission shall immediately notify the FCC of the rescission by serving it a copy of this order. The Secretary shall further advise the FCC that the Commission will immediately commence rulemaking with respect to rates, terms


and conditions of pole attachment contracts, however, Wyoming should not be considered a certifying jurisdiction under 47 U.S.C. Section 224 until further notice.


4. The Secretary of the Commission shall serve a copy of this order on all Wyoming electric utilities, all Wyoming telephone utilities, and Wyoming cable television systems.

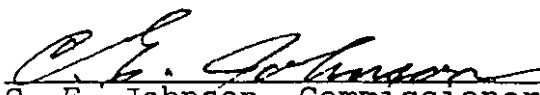
5. This order is effective immediately.

MADE AND ENTERED at Cheyenne, Wyoming, this 22nd day of June, 1983.

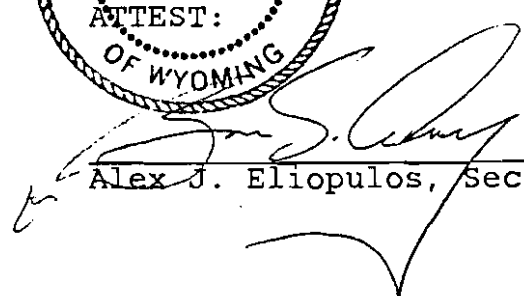
PUBLIC SERVICE COMMISSION
OF WYOMING


John R. Smyth, Chairman


G. Keith Osborn, Commissioner


C. E. Johnson, Commissioner




Alex J. Eliopoulos, Secretary

Office of Chairman Mark S. Fowler

Date: 4-5-83

To:

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|---|---|
| <input checked="" type="checkbox"/> Common Carrier Bureau | <input type="checkbox"/> Managing Director |
| <input type="checkbox"/> CCB Complaints Branch | <input type="checkbox"/> Secretary |
| <input type="checkbox"/> Mass Media Bureau | <input type="checkbox"/> Library |
| <input type="checkbox"/> MMB Complaints Branch | <input type="checkbox"/> Internal Review/Security |
| <input type="checkbox"/> Private Radio Bureau | <input type="checkbox"/> Review Board |
| <input type="checkbox"/> Field Operations Bureau | <input type="checkbox"/> Admin. Law Judges |
| <input type="checkbox"/> Plans and Policy | <input type="checkbox"/> Public Affairs |
| <input type="checkbox"/> Science and Technology | <input type="checkbox"/> Consumer Assistance |
| <input type="checkbox"/> General Counsel | <input type="checkbox"/> _____ |

From: SIC

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| <input type="checkbox"/> Appropriate Handling— No Reply Required | <input type="checkbox"/> Prepare Reply for Chairman's Signature |
| <input checked="" type="checkbox"/> Appropriate Handling | <input type="checkbox"/> Prepare Reply for Bureau/Office Chief's Signature |
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| <input type="checkbox"/> Rewrite and Return | |

Internal: Form A Form B Form C Form D

(1) _____

(2) _____

Remarks:

*Public Service Commission*

CAPITOL HILL BUILDING

320 W. 25TH STREET

CHEYENNE, WYOMING 82002

JOHN R. SMYTH
CHAIRMANG. KEITH OSBORN
DEPUTY CHAIRMANC.E. "NED" JOHNSON
COMMISSIONERALEX J. ELIOPULOS
CHIEF COUNSEL AND
ADMINISTRATIVE SECRETARYFRANK L. RAUCHFUSS
DIRECTOR, UTILITIES DEPARTMENTDELBERT L. BOYER
CHIEF ENGINEERWILLIAM M. ROONEY
DIRECTOR, MOTOR TRANSPORTATIONWILLIAM L. JOHNSON
DIRECTOR, RATE AND TARIFF

March 29, 1983

Mark S. Fowler, Chairman
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Dear Chairman Fowler:

Under date of February 24, 1983, our Commission sent you copies of General Order No. 49 having to do with regulating utility telephone pole attachment service for cable television systems. In this regard, we are now submitting two copies of "Notice and Order Amendment" under General Order No. 49 for your information.

Yours very truly,

ALEX J. ELIOPULOS, Secretary

1b

Enc.

cc: Gary M. Epstein, Chief,
Common Carrier Bureau

1983

APR 1 1983
COMMUNICATIONS SECTION

BEFORE THE PUBLIC SERVICE COMMISSION OF WYOMING

IN THE MATTER OF THE REGULATION OF
UTILITY POLE ATTACHMENT SERVICE
FOR CABLE TELEPHONE SYSTEMS AND
OTHER PERSONS

)
)
)
)

GENERAL ORDER
NO. 49

NOTICE AND ORDER AMENDMENT

By order issued in this proceeding on February 17, 1983, this Commission found that pursuant to W.S. 37-1-101, 37-1-102, 37-2-112, 37-2-119, 37-2-121, 37-2-112, 37-3-101, 37-3-103, 37-3-111, 37-3-112, 37-3-114 and Commission Rule Section 218, the Commission is empowered and required to regulate the use or rental of utility facilities in the utility public and other public interest, and that this jurisdiction extends to telephone utility poles which are an integral part of their facilities. Wyoming law requires that attachments on all utility facilities including poles be regulated in a uniform, nondiscriminatory manner for the protection of utility public and the subscribers of cable television systems.

IT IS THEREFORE ORDERED THAT:

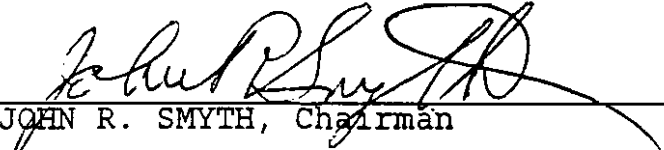
1. General Order No. 49, should be amended to clarify that Commission authority applies to attachments on poles of all utilities as defined by 37-1-101 including those of electric utilities.
2. The Secretary of the Commission shall serve a copy of this order on Wyoming electric utilities and cable television systems.
3. Any protests to, or other representations concerning, this order must be filed with the Commission on or before May 6, 1983 at the following address:

Wyoming Public Service Commission
Capitol Hill Building
320 West 25th Street
Cheyenne, Wyoming 82002
Attention: Alex J. Eliopulos, Secretary

4. This order is effective immediately.

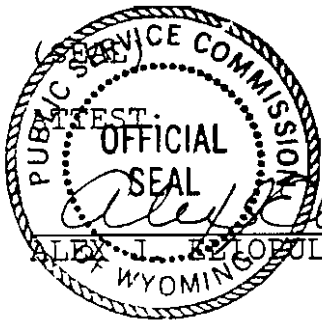
MADE and ENTERED at Cheyenne, Wyoming this 28th day of March,
1983.

PUBLIC SERVICE COMMISSION OF WYOMING


JOHN R. SMYTH, Chairman


C. E. JOHNSON, Commissioner


G. KEITH OSBORN, Commissioner



ALEX J. ELLOPULOS, Secretary

BEFORE THE PUBLIC SERVICE COMMISSION OF WYOMING

IN THE MATTER OF THE REGULATION OF)
UTILITY POLE ATTACHMENT SERVICE)
FOR CABLE TELEPHONE SYSTEMS AND)
OTHER PERSONS)

GENERAL ORDER
NO. 49

NOTICE AND ORDER AMENDMENT

By order issued in this proceeding on February 17, 1983, this Commission found that pursuant to W.S. 37-1-101, 37-1-102, 37-2-112, 37-2-119, 37-2-121, 37-2-112, 37-3-101, 37-3-103, 37-3-111, 37-3-112, 37-3-114 and Commission Rule Section 218, the Commission is empowered and required to regulate the use or rental of utility facilities in the utility public and other public interest, and that this jurisdiction extends to telephone utility poles which are an integral part of their facilities. Wyoming law requires that attachments on all utility facilities including poles be regulated in a uniform, nondiscriminatory manner for the protection of utility public and the subscribers of cable television systems.

IT IS THEREFORE ORDERED THAT:

1. General Order No. 49, should be amended to clarify that Commission authority applies to attachments on poles of all utilities as defined by 37-1-101 including those of electric utilities.

2. The Secretary of the Commission shall serve a copy of this order on Wyoming electric utilities and cable television systems.

3. Any protests to, or other representations concerning, this order must be filed with the Commission on or before May 6, 1983 at the following address:

Wyoming Public Service Commission
Capitol Hill Building
320 West 25th Street
Cheyenne, Wyoming 82002
Attention: Alex J. Eliopulos, Secretary

4. This order is effective immediately.

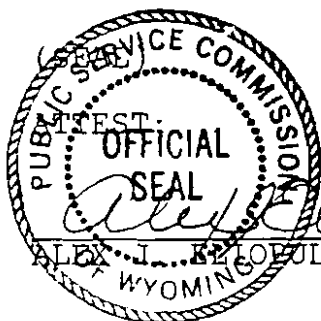
MADE and ENTERED at Cheyenne, Wyoming this 28th day of March,
1983.

PUBLIC SERVICE COMMISSION OF WYOMING


JOHN R. SMYTH, Chairman


C. E. JOHNSON, Commissioner


G. KEITH OSBORN, Commissioner



ALEX I. ZOLOPOULOS, Secretary

NATIONAL CABLE TELEVISION ASSOCIATION
JAMES H. EWALT
Director, State Government Relations

1724 MASSACHUSETTS AVENUE, N.W.
WASHINGTON, D.C. 20036
202/775-3673

File Wyoming Rules

BEFORE THE PUBLIC SERVICE COMMISSION OF WYOMING

RECEIVED

IN THE MATTER OF THE REGULATION OF)
TELEPHONE POLE ATTACHMENT SERVICE)
FOR CABLE TELEVISION SYSTEMS)

MAR 15 1978
GENERAL
ORDER NO. 49

ENFORCEMENT DIVISION

NOTICE AND ORDER

This matter is before the Commission upon the 1978 amendment to the Federal Communications Act (47 U.S.C. Section 224) whereby the U.S. Congress allowed states to continue the regulation of utility pole attachment service (rates, terms, and conditions for utility pole attachments by cable television systems) upon certification to the Federal Communications Commission that a state or its utility regulatory Commission regulates such rates, terms and conditions; and that it has the authority to consider and does consider the interest of the subscribers of cable television services, as well as the interests of the consumers of the utility services.

The Commission, having considered the governing Wyoming Statutes, its policies governing all utility pole attachments, and being fully advised in the premises CONCLUDES, as follows:

1. The Commission has heretofore regulated all utility pole attachment service by requiring the utilities to file contracts entered into between them and the cable television systems or other person desiring to use space on utility poles; which contracts must set forth the terms, conditions and rates for use of such space. This method of pole attachment regulation is pursuant to W.S. (Wyoming Statutes) 37-3-111 and the long standing Commission rule now designated Section 218; both of which require the filing by utilities of contracts affecting utility service or the use of utility facilities, to permit the Commission to determine as required by law that the charges, mode of attachment, and safety of such attachments and service are in the public interest.

The general statutory authority for regulation of pole attachment service is:

a. W. S. 37-2-112 which provides that the Commission has general and exclusive powers to regulate and supervise every public utility as defined by W.S. 37-1-101 including telephone utilities;

b. W. S. 37-1-102 which defines the terms "rate" and "service regulation" as follows:

"(a) The term "rate," when used in this act, shall mean and include, in the plural number, as well as in the singular, every individual or joint rate, classification fair, toll, charge or other compensation for service rendered or to be rendered by any public utility, and every rule, regulation, practice, act, requirement or privilege in any way relating to such rate, fair, toll, charge or other compensation, and any schedule or tariff or part of a schedule or tariff thereof.

(b) The term "service regulation" shall mean and include every rule, regulation, practice, act or requirement in any way relating to the service or facilities of a public utility." (emphasis supplied);

c. W. S. 37-2-119, 37-121, 37-2-112, 37-3-101 and 37-3-103 which define the Commission's rate-making authority, including its regulation of the "renting of any facilities incident to such service" (W.S. 37-3-103); and

d. W. S. 37-112 and 37-3-114 which govern the safe use of such facilities; the specific language of 37-3-114 pertinent to this order being:

"All instrumentalities, equipment, plant and facilities furnished, employed or used by any public utility, shall in all respects be adequate and efficient, and the construction, operation and use thereof, shall be such as shall prevent injury to property, and as shall promote the safety, health, comfort, and convenience of its patrons, employees and the public, and to this end, the commission may make rules and regulations governing the construction, maintenance and operation of telephone, telegraph, trolley, electric light and power lines hereafter built within this state*** Provided that all such equipment, plant, and facilities shall be maintained in such working condition that will provide a minimum of interference with radio and television reception to residents and highway users in the immediate area of such equipment, plant, and facilities." (Emphasis supplied)

2. The Commission, pursuant to W.S. 37-2-121 and the other statutory authority set forth above, is specifically empowered: to investigate rates for service provided by public utilities; to fix such rates as it shall determine to be just and reasonable and in compliance with law; to regulate the use or rental of utility facilities in the utility public and other public interest; and to regulate the safety of the service and facilities provided by a public utility.

3. The Commission's jurisdiction over Wyoming utility telephone companies extends to their poles, which are an integral part of their facilities. Regulation of the service of providing pole attachment by telephone companies is necessary in the public interest in that all utility facilities should be operated to produce the optimal results to both utility and its subscribers, including that there should be a fair, just and reasonable rate for pole attachment service. The Commission is aware that revenue received by telephone companies from such sources as pole attachment rates reduces the revenue that must be earned from conventional utility services, thereby lowering the utility consumer's overall rate. Moreover, regulation of pole attachment rates by the PSC will enable the Commission to establish rates for such pole attachments that are compensatory and do not result in the subsidization by telephone subscribers of cable television systems while, on the other hand, insuring that the cable television systems pay a fair and reasonable rate for the pole attachment service.

4. It is clear under Wyoming law that the Wyoming utility telephone companies permitting cable television systems to use space on their utility poles constitutes the rendering of a regulated utility service. There can be no doubt that the utilization by cable television systems of telephone company poles has resulted in substantial and direct benefit to the

cable television systems. Similarly, the utility poles owned by a telephone company are clearly facilities of that company which are made available for use by various customers, including cable television systems.

5. Wyoming law, including the public interest mandates thereof, requires that the Commission's policies governing regulation of cable television system pole attachment service should comply with the requirements of the 1978 Federal Communications Act Amendment. The Commission action is required by law and conforms to the decision by the Supreme Court of the State of Utah dated September 30, 1982 (Case Nos. 17794, 17813, Utah Cable Television Operations et al v. Utah PSC).

IT IS THEREFORE ORDERED THAT:

1. All Wyoming telephone utilities regulated by the Commission, which provide full attachment space for cable television systems, shall file tariffs setting forth the rates, terms and conditions for such pole attachments.

2. The Secretary of the Commission shall provide a copy of this order to the Federal Communications Commission to certify that this Commission regulates pole attachment rates, terms and conditions; and that the Commission has the authority to consider, and must, under such authority, consider the interests of the subscribers of cable television systems as well as the interests of the consumers of the telephone utility services, as provided in 47 U.S.C. 224(c)(2).

3. The Secretary of the Commission shall provide a copy of this order to the Wyoming telephone utilities, the Wyoming cable television systems and shall publish the same.

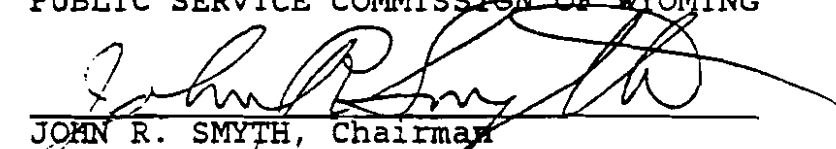
4. Any protests to or other representations concerning this order must be filed with the Commission on or before April 15, 1983 at the following address:

Wyoming Public Service Commission
Capitol Hill Building
320 West 25th Street
Cheyenne, Wyoming 82002
Attention: Alex J. Eliopoulos, Secretary


5. This order is effective immediately.

MADE and ENTERED at Cheyenne, Wyoming this 17th day of
February, 1983.

PUBLIC SERVICE COMMISSION OF WYOMING


JOHN R. SMYTH, Chairman


G. KEITH OSBORN, Commissioner


C. E. JOHNSON, Commissioner



ATTEST:


ALEX J. ELIOPULOS, Secretary

THE STATE



OF WYOMING

ED HERSCHLER
GOVERNOR

Public Service Commission

CAPITOL HILL BUILDING

320 W. 25TH STREET

CHEYENNE, WYOMING 82002

JOHN R. SMYTH
CHAIRMAN
G. KEITH OSBORN
DEPUTY CHAIRMAN
C.E. "NED" JOHNSON
COMMISSIONER
ALEX J. ELIOPULOS
CHIEF COUNSEL AND
ADMINISTRATIVE SECRETARY

FRANK L. RAUCHFUSS
DIRECTOR, UTILITIES DEPARTMENT
DELBERT L. BOYER
CHIEF ENGINEER
WILLIAM M. ROONEY
DIRECTOR, MOTOR TRANSPORTATION
WILLIAM L. JOHNSON
DIRECTOR, RATE AND TARIFF

February 24, 1983

RECEIVED

Mark S. Fowler, Chairman
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

MAR 4 1983

ENFORCEMENT DIVISION

Dear Chairman Fowler:

Enclosed are two conformed copies of the Commission's order whereby it certifies that it fully regulates utility telephone pole attachment service for cable television systems pursuant to the requirements of 47 U.S.C. 224(c)(2).

Yours very truly,


ALEX J. ELIOPULOS, Secretary

AJE:lb

Enc.

cc: Gary M. Epstein, Chief,
Common Carrier Bureau

BEFORE THE PUBLIC SERVICE COMMISSION OF WYOMING

RECEIVED

MAR 4 1983

IN THE MATTER OF THE REGULATION OF)
TELEPHONE POLE ATTACHMENT SERVICE)
FOR CABLE TELEVISION SYSTEMS)

ENFORCEMENT DIVISION

GENERAL
ORDER NO. 49

NOTICE AND ORDER

This matter is before the Commission upon the 1978 amendment to the Federal Communications Act (47 U.S.C. Section 224) whereby the U.S. Congress allowed states to continue the regulation of utility pole attachment service (rates, terms, and conditions for utility pole attachments by cable television systems) upon certification to the Federal Communications Commission that a state or its utility regulatory Commission regulates such rates, terms and conditions; and that it has the authority to consider and does consider the interest of the subscribers of cable television services, as well as the interests of the consumers of the utility services.

The Commission, having considered the governing Wyoming Statutes, its policies governing all utility pole attachments, and being fully advised in the premises CONCLUDES, as follows:

1. The Commission has heretofore regulated all utility pole attachment service by requiring the utilities to file contracts entered into between them and the cable television systems or other person desiring to use space on utility poles; which contracts must set forth the terms, conditions and rates for use of such space. This method of pole attachment regulation is pursuant to W.S. (Wyoming Statutes) 37-3-111 and the long standing Commission rule now designated Section 218; both of which require the filing by utilities of contracts affecting utility service or the use of utility facilities, to permit the Commission to determine as required by law that the charges, mode of attachment, and safety of such attachments and service are in the public interest.

The general statutory authority for regulation of pole attachment service is:

a. W. S. 37-2-112 which provides that the Commission has general and exclusive powers to regulate and supervise every public utility as defined by W.S. 37-1-101 including telephone utilities;

b. W. S. 37-1-102 which defines the terms "rate" and "service regulation" as follows:

"(a) The term "rate," when used in this act, shall mean and include, in the plural number, as well as in the singular, every individual or joint rate, classification fair, toll, charge or other compensation for service rendered or to be rendered by any public utility, and every rule, regulation, practice, act, requirement or privilege in any way relating to such rate, fair, toll, charge or other compensation, and any schedule or tariff or part of a schedule or tariff thereof.

(b) The term "service regulation" shall mean and include every rule, regulation, practice, act or requirement in any way relating to the service or facilities of a public utility." (emphasis supplied);

c. W. S. 37-2-119, 37-121, 37-2-112, 37-3-101 and 37-3-103 which define the Commission's rate-making authority, including its regulation of the "renting of any facilities incident to such service" (W.S. 37-3-103); and

d. W. S. 37-112 and 37-3-114 which govern the safe use of such facilities; the specific language of 37-3-114 pertinent to this order being:

"All instrumentalities, equipment, plant and facilities furnished, employed or used by any public utility, shall in all respects be adequate and efficient, and the construction, operation and use thereof, shall be such as shall prevent injury to property, and as shall promote the safety, health, comfort, and convenience of its patrons, employees and the public, and to this end, the commission may make rules and regulations governing the construction, maintenance and operation of telephone, telegraph, trolley, electric light and power lines hereafter built within this state*** Provided that all such equipment, plant, and facilities shall be maintained in such working condition that will provide a minimum of interference with radio and television reception to residents and highway users in the immediate area of such equipment, plant, and facilities." (Emphasis supplied)

2. The Commission, pursuant to W.S. 37-2-121 and the other statutory authority set forth above, is specifically empowered: to investigate rates for service provided by public utilities; to fix such rates as it shall determine to be just and reasonable and in compliance with law; to regulate the use or rental of utility facilities in the utility public and other public interest; and to regulate the safety of the service and facilities provided by a public utility.

3. The Commission's jurisdiction over Wyoming utility telephone companies extends to their poles, which are an integral part of their facilities. Regulation of the service of providing pole attachment by telephone companies is necessary in the public interest in that all utility facilities should be operated to produce the optimal results to both utility and its subscribers, including that there should be a fair, just and reasonable rate for pole attachment service. The Commission is aware that revenue received by telephone companies from such sources as pole attachment rates reduces the revenue that must be earned from conventional utility services, thereby lowering the utility consumer's overall rate. Moreover, regulation of pole attachment rates by the PSC will enable the Commission to establish rates for such pole attachments that are compensatory and do not result in the subsidization by telephone subscribers of cable television systems while, on the other hand, insuring that the cable television systems pay a fair and reasonable rate for the pole attachment service.

4. It is clear under Wyoming law that the Wyoming utility telephone companies permitting cable television systems to use space on their utility poles constitutes the rendering of a regulated utility service. There can be no doubt that the utilization by cable television systems of telephone company poles has resulted in substantial and direct benefit to the

cable television systems. Similarly, the utility poles owned by a telephone company are clearly facilities of that company which are made available for use by various customers, including cable television systems.

5. Wyoming law, including the public interest mandates thereof, requires that the Commission's policies governing regulation of Cable television system pole attachment service should comply with the requirements of the 1978 Federal Communications Act Amendment. The Commission action is required by law and conforms to the decision by the Supreme Court of the State of Utah dated September 30, 1982 (Case Nos. 17794, 17813, Utah Cable Television Operations et al v. Utah PSC).

IT IS THEREFORE ORDERED THAT:

1. All Wyoming telephone utilities regulated by the Commission, which provide full attachment space for cable television systems, shall file tariffs setting forth the rates, terms and conditions for such pole attachments.

2. The Secretary of the Commission shall provide a copy of this order to the Federal Communications Commission to certify that this Commission regulates pole attachment rates, terms and conditions; and that the Commission has the authority to consider, and must, under such authority, consider the interests of the subscribers of cable television systems as well as the interests of the consumers of the telephone utility services, as provided in 47 U.S.C. 224(c)(2).

3. The Secretary of the Commission shall provide a copy of this order to the Wyoming telephone utilities, the Wyoming cable television systems and shall publish the same.


4. Any protests to or other representations concerning this order must be filed with the Commission on or before April 15, 1983 at the following address:


Wyoming Public Service Commission
Capitol Hill Building
320 West 25th Street
Cheyenne, Wyoming 82002
Attention: Alex J. Eliopoulos, Secretary


5. This order is effective immediately.

MADE and ENTERED at Cheyenne, Wyoming this 17th day of
February, 1983.

PUBLIC SERVICE COMMISSION OF WYOMING


JOHN R. SMYTH, Chairman


G. KEITH OSBORN, Commissioner


C. E. JOHNSON, Commissioner



ATTEST:


ALEX J. ELIOPULOS, Secretary

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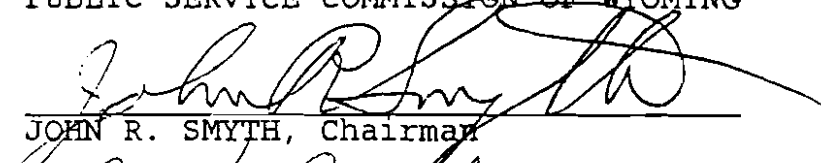
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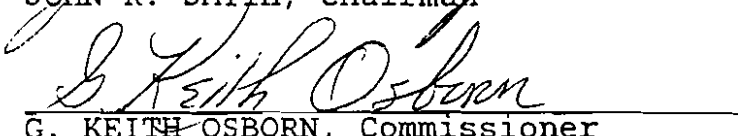
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